

**Arizona State Board of Homeopathic Medical
Examiners
Minutes of Regular Meeting
November 9, 2004**

I. CALL TO ORDER

Presiding officer, Charles Schwengel DO, MD(H), called the meeting to order at 9:05 a.m.

II. ROLL CALL

MEMBERS PRESENT:

Charles Schwengel DO, MD(H), President
Annemarie Welch, MD,MD(H), Vice President
Anna Marie Prassa, Secretary-Treasurer
Don Farris
Garry Gordon, MD, DO, MD(H)
Bruce Shelton, MD, MD(H)

Dawn Lee, Assistant Attorney General and Christine Springer, Executive Director and members of the public were also present.

III. REVIEW, DISCUSS, AND ACTION: PREVIOUS MEETING MINUTES

Dr. Shelton made separate motions adopting the September 14, 2004 regular and executive session minutes. Ms. Prassa seconded both motions that passed unanimously.

IV. REVIEW, CONSIDERATION, AND ACTION ON APPLICATIONS

A. Physicians

Ellis Browning, MD(H) Review Annual Compliance Report

The executive director informed the board that Dr. Browning was unable to attend the meeting due to his health status. She noted that he had timely filed his 2004 renewal with an auditory report as required by the terms of a consent agreement. However, when the board requested his attendance at the July, 2004 regular meeting for an oral interview Dr. Browning's wife had informed the board that her husband's health status was in decline and that it was not possible to travel to Phoenix at that time. According to a recent conversation with Mrs. Browning, her husband's health continues to decline. The board did not take action at this time. Dr. Browning's homeopathic medical license will expire December 31, 2004. Should he submit a 2005 license renewal the board will re-examine the requirements of the consent agreement at that time.

Jeffrey Rutgard, MD – Review Consent Agreement

Ms. Prassa began the discussion by making a statement regarding concerns with the consent agreement as written. In particular, she did not believe it to be appropriate for a naturopathic physician to provide supervision to a homeopathic

physician and she questioned Dr. Gear's training to serve as a supervisor to a physician practicing homeopathic modalities.

Dr. Schwengel questioned A.A.G. Lee whether the board can supervise the financial aspects of an applicant's practice. A.A.G. Lee responded that the board must declare the specific financial aspects they would want supervised in the terms of the consent agreement. For example, if the board specified quarterly reports indicating all Medicare billings the physician would be required to produce the information per the terms of the specified consent agreement.

Dr. Shelton stated that the board had determined Dr. Rutgard met the qualifications for licensure at the last regular meeting and the board had approved the application and directed the preparation of a consent agreement. He indicated that the board's attention should focus on the language of the consent agreement. A.A.G. Lee stated that should the board determine that additional language is necessary in relation to Dr. Rutgard's financials the agreement could only address those concerns in relation to his practice. No personal financial information could be monitored or required.

The board discussed additional language to insert on page 6, line 9 as follows:

Dr. Rutgard's practice during the three year probationary term shall be directly supervised on-site by a physician approved by the Board.

Ms. Prassa made a motion approving the insertion of the language at page 6, line 9 as indicated. Dr. Gordon seconded the motion that passed unanimously. The board directed the executive director to prepare a Revised Consent Agreement with the changes as discussed and obtain Dr. Rutgard's signature. The effective date of Dr. Rutgard's licensure would be the signature date of the board's representative.

New Physician Applications

Martin Plotkin, M.D.

Dr. Plotkin, M.D. was present to address the board and respond to questions during consideration of his license application. Dr. Gordon made a motion accepting Dr. Plotkin's application as presented. Dr. Welch seconded the motion that passed unanimously.

Dr. Plotkin completed the oral examination and his passage of the written examination was confirmed. Dr. Gordon moved to approve Dr. Plotkin's homeopathic medical license. Mr. Farris seconded the motion that passed unanimously.

Stefanie Workman, M.D.

Dr. Workman's application was deferred to the next regular meeting

B. Homeopathic Medical Assistants

Dr. Welch made a motion approving the homeopathic medical assistant application submitted by Marjorie Awarski. Motion seconded by Mr. Farris and passed unanimously.

V. REVIEW, DISCUSS AND ACTION REGARDING INVESTIGATIONS/ COMPLAINTS

A. Initial Reviews

05-02 T.F. vs. Garry Gordon, MD, DO, MD(H)

Dr. Gordon was recused from the discussion. Dr. Shelton noted that Dr. Gordon had provided required documentation addressing the concerns enumerated in the complaint. Information received from California indicates that Dr. Gordon has an active license in good standing. In addition, documentation provided by Dr. Gordon and obtained from the State of California website shows that honorary M.D.'s were granted to osteopathic licensees from the University of California at Davis. Dr. Shelton made a motion to dismiss the complaint with no violation noted. Dr. Welch seconded the motion that passed with a majority vote.

Roll call: Schwengel, Shelton, Prassa, Farris, and Welch – aye (dismissing)
Gordon recused

05-03 Anonymous vs. Jana Shiloh – UP

Dr. Welch was recused from the discussion. Dr. Schwengel began the discussion by stating that although the complainant indicated Ms. Shiloh promoted herself as a homeopath, he could not confirm the allegation in the documentation provided from her advertisements or web site. The information provided in the advertisements indicates that Ms. Shiloh is a homeopathic educator which does not violate A.R.S. 32-2931. The executive director informed the board that an application was on file from Dr. Mikles who works with Ms. Shiloh and that in phone conversations with Ms. Shiloh it was her stated intention to file an application for homeopathic medical assistant. Mr. Farris made a motion dismissing the complaint. Dr. Gordon seconded the motion that passed with a majority vote.

Roll call: Farris, Gordon, Schwengel, Shelton, Prassa – aye (dismissing)
Welch recused

05-04 Anonymous vs. Bruce Shelton MD, MD(H)

Dr. Shelton was recused from the discussion. Dr. Schwengel provided a case review and stated that the board must determine the following: 1. whether promoting the use of thermography is irresponsible and 2. whether or not kickbacks are involved by the language of the letter Dr. Shelton sent to physicians informing them of the thermography service.

Mr. Farris stated that it is his opinion, that the language of the letter sent to the physicians indicating the rental of an examination room is not a kickback but rather, a business relationship between two professionals. The letter indicates that a contract would be entered into between the two physicians defining the

business relationship. In addition, fees paid for the technician's services do not indicate a kickback, but rather, a fee for service provided.

Dr. Schwengel invited Dr. Shelton to provide a statement of his training credentials regarding thermography. Dr. Shelton presented evidence of certification showing that he had appropriate training in thermography which, in the 1980's, was approved by the FDA. He directed the board's attention to the manufacturer's web site at www.meditherm.com. Dr. Shelton noted his membership in the national association dedicated to promoting the use of thermograms which he indicated is a non-invasive procedure as compared to radiation utilized in mammography. Dr. Shelton also informed the board that he had not received any responses to his advertisement regarding the thermography and was withdrawing his promotional correspondence.

Dr. Schwengel questioned A.A.G. Lee concerning the definition of kickbacks. She responded by indicating that she would prefer to research the matter, but that generally a kickback would involve a covert agreement between business partners that a patient or client would not be aware of. Mr. Farris indicated that a rental agreement is a legitimate business arrangement.

Dr. Schwengel also discussed the allegation from the anonymous complainant that there was a fear of retaliation by board members should the complaint have been made in the open. He stated that he was pleased the allegation had been brought to the forefront and that board members were required by their appointment to the office to set aside personal feelings in their role as board members. Recusal is a mechanism that appointed members can utilize to address board business in which there is a direct personal or business relationship to the matter under discussion.

Dr. Schwengel also discussed aspects of the federal Stark law that forbids referral to another professional entity from which a financial benefit is obtained from the referral. Dr. Shelton indicated that thermography is not reimbursable by Medicare and insurance policies. In response to a question from Dr. Shelton requesting that the board condone a letter of explanation regarding the first correspondence that had led to the complaint, A.A.G. Lee indicated that the board could not direct the specific business conduct of his practice.

Ms. Prassa made a motion dismissing the complaint with no violation. Dr. Gordon seconded the motion that passed with a majority vote.

Roll call: Prassa, Gordon, Welch, Schwengel, Farris
Shelton recused

Previous Reviews

The board discussed Dr. Lanson's letter he had provided to them as an outcome of a previous suggestion to provide an explanation of his business practices.

Dr. Welch made a statement that under Medicare, a contracted physician must collect 20% of the total fee for service from the patient. It is her understanding that Dr. Lanson bills his patients the 20% as required by the terms of Medicare. In her opinion, Dr. Lanson could document indigent status of the patient and Medicare would be satisfied that he had provided due diligence to collect the 20%.

After further discussion of the information Dr. Lanson provided Dr. Welch made a motion directing the executive director to send an acknowledgement of his correspondence. Dr. Shelton seconded the motion that passed unanimously.

VI. REVIEW, CONSIDERATION AND ACTION ON PROFESSIONAL BUSINESS

1. Dr. Shelton recused himself from this discussion. The executive director indicated that the Department of Revenue had not yet scheduled hearings regarding their proposed rules exempting prescription-only homeopathic drugs from the collection of sales tax. She would continue to monitor the rulemaking.
2. No discussion was held regarding proposed draft legislation for the 2005 legislative session.

VII. REVIEW, DISCUSS AND ACTION REGARDING OTHER BUSINESS

A brief presentation was made by the executive director concerning the continuing negotiations with the State Board's Office proposed Joint Office Costs for 2006 – 2007. Many cost estimates have been offered but no proposal has been accepted by the board or the Joint Legislative Budget Committee.

VIII. FUTURE AGENDA ITEMS

No discussion

IX. CALL TO THE PUBLIC

No members of the public spoke

X. ESTABLISHMENT OF FUTURE MEETING DATES

No discussion

CLOSE OF BUSINESS/ADJOURNMENT

The meeting adjourned at 10::50 a.m. following a motion by Ms. Prassa. Dr. Shelton seconded the motion that passed unanimously. The next Regular Meeting of the Board will convene at the State Board's Office Building, 1400 W. Washington, Basement Conference Room B-1, Phoenix, Arizona, 9:00 AM, on **January 11, 2005.**

Respectfully Submitted,

Christine Springer

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Executive Director